

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ADRIAN NICHOLSON, et al.,
Plaintiffs,

v.

SELECT MANAGEMENT RESOURCES,
LLC, et al.,
Defendants.

Civil Action No. 1:19-cv-519-CCE-JEP

ASIA ARCHIE, et al.,
Plaintiffs,

v.

SELECT MANAGEMENT RESOURCES,
LLC, et al.,
Defendants.

Civil Action No. 1:19-cv-575-CCE-JEP

AMELIA GREEN, et al.,
Plaintiffs,

v.

SELECT MANAGEMENT RESOURCES,
LLC, et al.,
Defendants.

Civil Action No. 1:19-cv-670-CCE-JEP

ALEXIS CANNON, et al.,
Plaintiffs,

v.

SELECT MANAGEMENT RESOURCES,
LLC, et al.,
Defendants.

Civil Action No. 1:19-cv-823-CCE-JEP

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO COMPEL ARBITRATIONS

NOW COME Defendants in the above-captioned cases, through their counsel, and submit this Response to Plaintiffs' Motion to Compel Arbitrations filed on September 25, 2019. Plaintiffs assert that their Motion involves "the same claims, same defenses and same Defendants" currently pending in *Strange et al v. Select Management Resources*, et al. 1:19-cv-321 and *Phillips et al v. Select Management Resources*, et al. 1:19-cv-325. For the same reasons stated in those cases, this Motion should be denied.

Approximately thirty-three (33) Plaintiffs – across all cases, including the *Strange* and *Phillips* cases -- entered an arbitration agreement that specifically states, "[t]o the extent that any Claim or Defense to any Claim requires a determination under the United States Constitution (a "Constitutional Determination"), such Constitutional Determination **must** be decided by a court, not an arbitrator." (*Strange* Doc # 33, Exhibits B, D, F, H, Paragraph 1, emphasis added.) Because Defendants have asserted, both as an affirmative defense, and as a counterclaim, that N.C. Gen. Stat. § 53-164 is unconstitutional under the United States Constitution, the Motion to Compel Arbitrations should be denied as to all of those Plaintiffs.

Moreover, Plaintiffs implicitly acknowledged by the joinder of the various individual plaintiffs that the claims across all six cases arise out of

similar transactions and pose sufficiently similar questions of law and fact. *See* Rule 20(a)(1)(B) of the Federal Rules of Civil Procedure. The initial question common to all Plaintiffs —whether N.C. Gen. Stat. § 53-164 is unconstitutional under the United States Constitution—warrants denial of all Plaintiffs’ Motions due to this commonality.

Defendants agree that the Court’s resolution of Plaintiffs’ motions to compel arbitrations in the *Strange* and *Phillips* cases will also resolve the motion in *Nicholson*, *Green*, *Archie*, and *Cannon*. Accordingly, and pursuant to this Court’s September 23, 2019 Order (*Nicholson* Doc # 24; *Green* Doc # 20, *Archie* Doc # 25, *Cannon* Doc # 21), Defendants hereby adopt and incorporate the arguments set forth by the Defendants in *Strange* and *Phillips*, including the Response in Opposition (*Strange* Doc # 38) and Sur-Reply (*Strange* Doc # 56).

Defendants believe Exhibit A to Plaintiffs’ Motion to Compel Arbitrations is an accurate representation of the current understanding of the Plaintiffs’ respective statuses, with three exceptions. Defendants understand that Antonio Rooks (*Nicholson* case), Asia Archie (*Archie* case), and Mohagemy Johnson (*Green* case) have accepted their offers to settle their claims. Defendants reserve the right to bring any additional discrepancies to the Court’s attention if they are discovered. Defendants also

note that, as settlement negotiations are ongoing, it is possible that Defendants will reach settlement agreements with additional Plaintiffs in the next 60 to 90 days.

Respectfully submitted this the 3rd day of October, 2019.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief complies with the word limitation provided in Local Rule 7.3(d). The foregoing brief contain less than 500 words in Century Schoolbook (13-point) proportional type. The word processing software used to prepare this brief was Microsoft Word for Office 365.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Defendants' Sur-reply to Plaintiffs' Motion to Compel Arbitrations was electronically filed with the Clerk of the Court by using the CM/ECF System which will automatically send notice of the filing to the following counsel:

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This the 3rd day of October, 2019.

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